

STATE OF WASHINGTON



OFFICE OF
INSURANCE COMMISSIONER

In the Matter of)	
)	
Employer's Resource Management)	No. D 05-328
Company and American Employer's)	
Benefit Trust,)	ORDER TO CEASE
Unauthorized Entities, and)	AND DESIST
)	
Douglas W. Gersema; George Gersema)	
and Andrew E. Loyst,)	
Individual Respondents)	

Pursuant to RCW 48.02.080 and RCW 48.15.023, the Insurance Commissioner (OIC) orders the entities and the individuals named above and their officers, directors, trustees, agents, employees, and affiliates ("Respondents") to immediately cease and desist from:

- A. Engaging in or transacting the unauthorized business of insurance in the State of Washington, including the collection or attempted collection of premium monies and the advertising of insurance and insurance-related products;
- B. Seeking, soliciting, pursuing, and/or obtaining any insurance business in the State of Washington and from participating, directly or indirectly, in any act of an insurance agent or insurance company in seeking, soliciting, pursuing, and/or obtaining any unauthorized insurance business in the state of Washington;
- C. Soliciting Washington residents to sell or purchase any plan or policy or coverage for any form of insurance;
- D. Soliciting Washington residents by e-mail, facsimile (fax), telephone, mail or any other means to induce them to purchase any form of insurance product; and from
- E. Offering to Washington residents a plan or policy or coverage for any form of insurance without submitting to examination by the Insurance Commissioner to determine the organization and solvency of the person or the entity offering such insurance, and to determine whether or not such person or entity complies with the applicable provisions of the Insurance Code.

THIS ORDER IS BASED ON THE FOLLOWING:

1. Employer's Resource Management Company ("ERMC") is a Virginia corporation headquartered in Boise, Idaho, which sells, maintains, administers, and operates an employee benefit plan that includes health insurance through the American Employer's Benefit Trust.
2. Douglas W. Gersema, George Gersema, and Andrew E. Loyst are officers of ERMC.
3. ERMC and Respondents have issued and underwritten insurance and transacted insurance in the State of Washington affecting subjects located wholly or in part in Washington and to be performed in Washington, including a plan or policy of coverage for health insurance covering Washington residents employed by Fidalgo Medical Associates issued on or about December 2002.
4. Respondents have not been granted a certificate of authority to act as an insurer or self-funded multiple employer welfare arrangement in Washington nor are any Respondents licensed as insurance agents or brokers in this state. Respondents have not submitted to OIC any appropriate certificate, license, or other document issued by another agency of this state, any subdivision thereof, or the federal government permitting or qualifying Respondents to provide such coverage in this state. Respondents also have not registered with the OIC as risk retention or risk purchasing agents, nor have they transacted this insurance through a licensed surplus lines broker in this state.
5. On or about April 7, 2004, Respondents admitted by telephone that the product sold in Washington is insurance, but alleged exemption from state regulation as a "single employer" employee welfare benefit plan under the Employee Retirement Income Security Act of 1974 (ERISA). Respondents failed to respond to the OIC's written inquiries to determine the extent of Respondents' unlawful transaction of insurance in this state.
6. Respondents also intentionally misrepresented to the purchasers that the product they were selling was being legally offered or was exempt from state laws because Respondents were a single-employer entity. This representation was false, deceptive, and misleading, in that the Respondents were fully aware that the above-described plan of insurance constitutes a multiple employer welfare arrangement (MEWA) as defined by 29 U.S.C. 1002(40), that the plan is not exempt from state insurance regulation under ERISA, and that Respondents were not authorized to issue such insurance under Washington's Insurance Code. This misleading representation was intended to induce Washington residents to purchase the insurance product sold by the Respondents.
7. Respondents' above-described conduct violates RCW 48.05.030, Certificate of authority required, RCW 48.125.020, Certificate of authority required, RCW 48.15.020, Solicitation by an unauthorized insurer prohibited – Personal liability, RCW 48.17.060, License required, and RCW 48.30.040, False information and advertising.

IT IS FURTHER ORDERED that Respondents, within forty-five (45) days of receipt of this Order, furnish the OIC with a complete listing, to include contact information, of all Washington residents and businesses who have purchased any insurance or insurance-related product from Respondents, and

that Respondents report to the OIC all premiums received by Respondents for insurance covering Washington risks.

IT IS FURTHER ORDERED that Respondents replace any insurance improperly placed in this state with a policy issued by an authorized insurer upon demand of any insured under any such policy pursuant to RCW 48.15.020.

This Order shall not prevent Respondents from fulfilling the terms of contracts formed prior to the effective date of this Order pursuant to RCW 48.15.020(2)(b).

Any violation of the terms of this Order by Respondents, their officers, directors, agents, or affiliates, will render the violator(s) subject to the full penalties authorized by RCW 48.02.080, RCW 48.15.023, and other applicable Code sections.

Respondents have the right to demand a hearing pursuant to chapters 48.04 and 34.05 RCW. This Order shall remain in effect subject to the further order of the commissioner.

THIS ORDER IS EFFECTIVE IMMEDIATELY and is entered at Tumwater, Washington, this ____ day of June 2005.

MIKE KREIDLER
Insurance Commissioner

By: _____
Charles Brown, Ass't Deputy Commissioner
Legal Affairs Division
Office of Insurance Commissioner
State of Washington